

LACTATION ACCOMMODATIONS LAWS & POLICIES

What Every Manager Should Know



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This resource draws from the collective expertise and wisdom of those working towards a world where all parents, babies, workers, and employers have resources to support the healthy, time-proven practice of breastfeeding/chestfeeding. Co-collaborators include public health advocates, health care staff, worker advocates, employment law experts, regulators, researchers, technical assistance providers, and people with lived experience in breastfeeding/chestfeeding (for themselves and/or their partners), including in challenging circumstances. The workgroup included the following, who gave us permission to list them here, among others:

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“Healthier kids mean everyone does better, including kids, parents, employers, insurance companies and more.”

Steve, Brunswick, NE



Introduction: Workplace Lactation Policies Are Good For Babies and Good For Business

Breastfeeding/chestfeeding provides long and short-term health benefits for children and parents.¹ But there are many challenges for starting and maintaining breastfeeding/chestfeeding and returning to work is a major one. Comprehensive workplace policies to support breastfeeding/chestfeeding — often referred to as a “lactation accommodations” policy — are not only important for healthy workers and babies, they are also good for employers.

A note on inclusivity

There is growing awareness that the term “breastfeeding/chestfeeding” and related phrases are helpful to use to represent the full range of human experiences of providing human milk to babies and children. To support an inclusive approach, this resource uses the term “breastfeeding/chestfeeding.”²

Robust lactation accommodations policies are linked with better worker morale, increased productivity, longer employee retention, decreased healthcare costs, overall job satisfaction, and positive employer reputation.³ And because employers are legally required to provide these accommodations, having a clear and up-to-date comprehensive workplace policy is crucial to helping managers and staff understand and comply with legal requirements.

In 2010, federal law established minimum standards for the accommodations employers must provide for breastfeeding/chestfeeding employees. In late 2022, the federal PUMP for Nursing Mothers Act (PUMP Act)⁴ expanded these federal protections to include workers who had previously been left out. The new law also provided workers and worksite regulators access to the full range of enforcement tools and legal remedies when employees are wrongfully denied these protections.⁵ Federal law sets the baseline — many Tribes, states and local governments have their own laws that go beyond federal minimum standards. For example, Minnesota law forbids employers from docking workers' pay for lactation breaks, does not have an exemption for "undue hardship," and requires employers to provide notice of lactation accommodations rights in the worker's primary language.⁶ The Ho-Chunk Nation allows Tribal employees to bring their babies to work for breastfeeding/chestfeeding purposes.⁷ Importantly, if the federal Wage and Hour Division receives a complaint about noncompliance with federal lactation accommodations requirements, it can initiate a comprehensive investigation into all potential violations of the Fair Labor Standards Act (FLSA). This point underscores why it is important for employers to understand what the law requires for safeguarding the rights and well-being of their employees.

This resource provides information about the common mistakes employers and managers often make when it comes to implementing lactation support policy and offers practical guidance on how to avoid them.

Common Pitfalls and How to Avoid Them

1. Supervisors are not sure what to do when workers ask about lactation accommodations.

How does this show up in the workplace?

Part of the challenge for workplaces is that lactation accommodations involve situations that are temporary, typically don't last very long, and yet also need quick responses. Breastfeeding/chestfeeding is done for a relatively short time in the U.S. Only 24.9% of U.S. babies are breastfed exclusively for the first six months of life, despite this being a well-established health recommendation.⁸ And by the time a baby is one year old, only 35.9% are being breastfed at



all. So the needs of breastfeeding/chestfeeding workers are, as one researcher put it, “unique, acute, and transient.”⁹

Many business owners and managers know that they are required to provide some kind of lactation accommodations but may not fully understand all that they are required to do. Direct supervisors and managers often struggle with knowledge of what to do when a worker says they will need time and space to pump human milk — especially if it’s not something that comes up very often, or if the workplace doesn’t have a designated lactation space. This means that supervisors might inadvertently violate the law by forcing an employee to wait for a lactation break, failing to provide adequate lactation space, or denying the lactation breaks outright. This can put the workplace at risk for a host of problems, including decreased morale, employee turnover, and at worst, legal liability.

How can a workplace avoid this pitfall?

Develop and maintain a clear and comprehensive lactation accommodations policy: Every workplace, whether a store, restaurant, hotel, warehouse, factory, farm, hospital, school, office, bus company, construction, or other kind of worksite, can benefit from a well-written and comprehensive lactation accommodations policy.

“Not only did I pump in a bathroom, but my employer never mentioned or addressed pumping concerns – I was tipped off by a co worker who had recently gone through the same experience to use the “emergency” bathroom that no one else ever used (and I didn’t even know existed!). I’m not even sure how often it was cleaned.” – Sara, Leicester, MA

In addition, policies can explain how the employer will help establish and maintain a supportive workplace culture for breastfeeding/chestfeeding workers, such as providing “lunch and learn opportunities,” post educational posters, or providing information about community resources to support breastfeeding/chestfeeding parents. All of these are recommended practices even if they aren’t legally required. For more tips on policy language, keep reading.

Provide training for new supervisors, required annual training and update trainings in response to legal or policy changes: The workplace can support its managers and supervisors and minimize potential legal problems by providing up-to-date, thorough, and repeated training on what the law and the worksite requires for lactation and pregnancy accommodations. All employees, and specifically new supervisors, should be trained on these requirements as part of their onboarding process. The training should be repeated annually and included with other required employee trainings. Worksites should also provide training to keep supervisors and other workers up-to-date on policy changes when needed.





2. The worksite has a policy, but it is not clear enough.

How does this show up in the workplace?

A policy is only helpful if it is properly put into practice. A poorly written or outdated policy can cause many problems. It can result in supervisors not knowing what they are supposed to do, so, they end up relying too much on workers to push for what is needed, or flag problems that the supervisor should have taken care of. As discussed more below, because of the nature of power dynamics and bias, putting the burden on workers to flag these kinds of worksite issues is impractical and unreasonable. This can put the employer at unnecessary legal risk, in addition to creating an unpleasant work environment. The Center for WorkLife Law has reviewed many lactation accommodations policies and has identified several common policy language missteps. Below are a few examples of the missteps and ways to avoid them.

A. Common missteps relating to lactation break TIME

 What the policy says	 What the supervisor hears
Negotiate a time that works for the company and the lactating employee.	I can decide when my employee takes lactation breaks, and pumping times are flexible, so I can change as I choose.
The breastfeeding worker should work with their supervisor to set a schedule	
Break time should run concurrently with existing breaks.	

- **Legal consideration:** Federal law requires that lactation breaks should be set based on what the employee needs, both in terms of length and when they are taken.¹⁰
- **To avoid this misstep:** Use proactive statements such as, “The lactating employee will inform [**designated contact**] of their needs for lactation breaks and potential schedule for expressing milk. [**Designated contact**] will ensure that schedule coverage is planned so the employee can take breaks when needed.”



What the policy says



We will provide two 15-minute reasonable lactation breaks each day for breastfeeding employees.

What the supervisor hears

Any time over the pre-planned lactation breaks is impermissible.



- **Legal consideration:** Federal law requires that lactation breaks should be set based on what the employee needs, both in terms of length and when they are taken.¹¹
- **How to avoid this misstep:** Use proactive statements in your policy such as:
 - “The lactating employee will inform [**designated contact person**] of their needs for lactation breaks and their likely schedule to express milk.”
 - “[**Designated contact person**] will ensure that coverage is planned so the employee can take their breaks when needed.”
 - “Lactating employees’ needs may vary, but often, employees need to take lactation breaks every 2–3 hours.”

B. Common missteps relating to lactation break **PAY**

 What the policy says	 What the supervisor hears
This break time is unpaid.	I need to deduct pay for every minute spent pumping.

- Legal consideration:** There are several legal considerations to note here including:
 - Some state laws require paid breaks, including Georgia, Illinois, and Minnesota,¹² and there may be other Tribal, state or local laws that require paid breaks for some or all types of workers.¹³
 - Federal law requires breaks be paid if:
 - The employee is pumping during a paid break (e.g., a paid lunch break).
 - The employee works while pumping.
 - Others who take breaks for non-lactation reasons are paid.¹⁴
 Because salaried workers are paid a predetermined amount, break times or minutes typically do not result in pay deductions and reducing their pay for breaktimes could be illegal.
- How to avoid this misstep:** Provide paid breaks. If the employer does not want to provide paid breaks, they should list and clearly explain the factors involved in determining whether breaks are paid or unpaid. The policy should also provide a name or/or department contact information for assistance.

C. Common misstep relating to lactation break **SPACE**

 What the policy says	 What the supervisor hears
Breastfeeding employees can schedule to use the conference room for pumping.	The employee will just schedule the time when they need it! No work for me!

- Legal consideration:** It is the employer’s responsibility to ensure break time and space accommodations are available when needed.¹⁵
- How to avoid this misstep:** Use a statement such as, “Employees can use the conference room to pump and lactating workers should contact [**designated person and/or department**] to ensure the room is made available for them to use as often as needed.”

D. Common misstep relating to time limits based on **BABY AGE**

What the policy says

Break time and space will be provided for one year.

What the supervisor hears

I'm meeting my employees' needs by providing break time and space. I only have to do this for a year.

- **Legal consideration:** The Pregnant Workers Fairness Act (effective on June 27, 2023) requires employers to provide accommodations for conditions relating to childbirth and pregnancy, without time limits.¹⁶ Tribal, state, or local laws may also require employers to provide lactation break time and space for longer periods of time or as long as needed.¹⁷
- **How to avoid this misstep:** Employers should avoid limiting the policy based on the age of the baby.

3. Lactating employees and co-workers do not know their rights and responsibilities.

How does this show up in the workplace?

Just like managers and supervisors may not know what to do, workers may also not know about the lactation accommodations their employers can provide and what the law requires. If workers don't know about these things, they may not know how to ask for what they need before it becomes a crisis impacting their health and/or work. This can cause unnecessary stress and poor morale, which can lead to increased absenteeism, less productivity, and a dysfunctional work environment. If they don't know how to get their needs met on the job, workers may decide to look for different jobs, leave the workforce, or stop breastfeeding/chestfeeding sooner, all of which can have negative impacts for both employers and workers.

"I am a medical professional and still faced harassment when returning to work but wishing to give my children the best possible healthiest start – from those who knew what was best for my babies. They requested I return due to understaffing and still complained about the pumping done during lunch and breaks and storage of the milk. Though they had no problem giving smokers extra breaks to feed their harmful habit." – Karen, Escalon, CA

Non-lactating workers also may need help in understanding the role they can play in helping or hindering lactation accommodations.¹⁸ When peers aren't familiar with their duties or the need to support lactating colleagues on the job, they may not provide the coverage an employee needs to take their breaks under law. At worst, coworkers could harass or pressure their lactating peers in ways that make the work environment inhospitable. Ensuring all staff know that providing lactation accommodations is an important legal mandate reduces the chance of peer-to-peer harassment or other illegal actions.

How can a workplace avoid this pitfall?

Provide training for all employees: Supervisors and managers need training on lactation accommodations requirements, and so do workers. Employers should provide up-to-date and thorough trainings about lactation and pregnancy accommodations requirements, and about their policies that operationalize these requirements, so that workers know how to access these rights in a constructive and timely way. The training can also help all employees know about what they can do to support a positive, productive work environment for breastfeeding/chestfeeding co-workers. The training should be provided during the onboarding process, repeated periodically (such as annually), and updated as needed.

4. Ineffective communications to employees about their rights can cause misunderstandings.

How does this show up in the workplace?

Effective communication is key to policy implementation and compliance. Managers and supervisors should proactively communicate with employees prior to their return to work about possible plans to express milk. This can help avoid misunderstandings around break times requirements and work schedules. Especially for jobs that have special scheduling considerations, where schedules are especially rigid or tight, or substitutes are crucial, proactive communication is essential. Failure to communicate details around a safe, clean, and suitable room for breastfeeding/chestfeeding or expressing milk can lead to increased emotional and psychological stress and discomfort for employees, which can significantly influence their desire to breastfeed/chestfeed and invite legal liability.

How can a workplace avoid this pitfall?

Develop and implement clear communication strategies: Employers can develop a comprehensive communication plan that specifies when and how breastfeeding/chestfeeding employees should be informed about their rights and accommodations, and by whom. By implementing a structured communication plan, workplaces, especially in challenging sites like

manufacturing plants, warehouses, and food and retail service-related jobs, can foster a culture of openness and trust, and reduce misunderstandings. This could also help to reduce the risk of legal non-compliance and potential disputes.

Make the information accessible: Make breastfeeding/chestfeeding-related information readily accessible. Organizations can integrate information into the onboarding process and ensure it's available through various channels like the company intranet, employee handbooks, QR codes, and posters. Providing multiple avenues for employees to access this information guarantees that breastfeeding/chestfeeding parents, whether they are new hires or seasoned staff, understand their rights and the accommodations available to them. Easy access to this information reinforces a company's support for breastfeeding/chestfeeding and promotes consistent understanding to help reduce compliance issues.

5. Workplaces fail to address how motherhood bias and power dynamics can operate to treat breastfeeding workers unfairly.

How does this show up in the workplace?

Hostility towards lactation in the workplace and negative perceptions of breastfeeding/chestfeeding workers can crop up in many ways. This is particularly notable in male-dominated industries, but it happens in female dominated ones as well.¹⁹ Women of color and women with low-income experience biases and vulnerabilities relating not only to their gender, but also relating to their race or ethnic identity, and job control.²⁰ Any worker might worry about asking a supervisor for a change in schedule or duties for whatever reason. For women — particularly women of color and/or women in jobs where they don't have a lot of control over their work — asking about a lactation accommodation can be scary and stressful. Fear of potential retaliation, like receiving negative feedback, potential barriers to career progression, or hyper scrutiny of the worker's schedule or performance, can discourage employees from speaking up about needs and concerns. This means that if potential biases are not addressed proactively, they can result not only in inefficient and less productive work environments, but also labor law violations.

How can a workplace avoid this pitfall?

Use clear, unambiguous policy language: Vague policy language can create a lot of unnecessary problems. For example, lactation policies often include a statement like, "Breastfeeding employees must continue to fulfill their obligations." This kind of statement is easy to interpret as implying that breastfeeding/chestfeeding workers should be closely watched to make sure they aren't slacking off. Or if the policy doesn't say anything at all about what adjustments managers must make, this can be interpreted as — the supervisor doesn't

have to change anything; the worker just has to get it all done even though they are also supposed to be getting lactation breaks. Under the law, for a break to be a break, the worker must be relieved of work duties, whether those involve quotas or some other metric. So, a good practice is for a policy to include language like:

- [[Employee quotas/duties](#)] will be adjusted to account for lactation breaks. Contact [[designated contact and/or department](#)] for assistance, at [[contact information](#)].

Promote fairness through communication and education: To promote a productive, equitable and healthy work environment, employers can develop clear and well-written lactation policy, consistently train and support to supervisors on the organization's commitment to providing lactation accommodations and encouraging open dialogue. Employers can also offer comprehensive employee training on equity, diversity, and belonging issues to promote workplace culture where biases can be understood and proactively addressed or mitigated.



“I work retail and have four kids. I breastfed and pumped for all four of them, but because I’m not a salaried employee I don’t have an office. I had to use someone else’s office and even if I locked the door it was possible for someone to walk in on me since all of the doors open with the same master key. In fact, I had that happen several times with one absent-minded manager. He was more embarrassed than I was. They recently did away with most of the office space at my store and I’m not sure where a breastfeeding mother would pump now.” — Ann, Granville, OH

Conclusion

Employers play a crucial role in fostering productive, healthy, and equitable workplace cultures, particularly through developing and implementing a comprehensive lactation accommodations policy. Having a well-written, inclusive, and culturally responsive lactation support policy is key for effective implementation at any worksite. In addition to a well-written policy, effective communication strategies and consistent training for employees and managers about existing laws and policies help reduce issues relating to policy compliance and cultivate a knowledgeable, supportive, and understanding work culture environment. Employers who prioritize the needs of their lactating employees through these strategies make a big difference in enhancing the breastfeeding/chestfeeding experience and improving the health and well-being of their employees and their families.

Additional Resources

For more information about the health benefits of breastfeeding/chestfeeding:

- Why Breastfeed: Benefits for You & Your Baby, [HealthyChildren.org](https://www.healthychildren.org/English/ages-stages/baby/breastfeeding/Pages/Why-Breastfeed.aspx), <https://www.healthychildren.org/English/ages-stages/baby/breastfeeding/Pages/Why-Breastfeed.aspx> (last updated Aug. 31, 2022) (discusses the benefits of breastfeeding/chestfeeding for baby and nursing parents)
- Reclaiming the Tradition of Breastfeeding: The Foundation of a Nation, 2018, Native Nutrition Conference Presentation by Camie Jae Goldhammer, <https://www.youtube.com/watch?v=YSGggdXqJ2s>, (Oct. 13, 2018) (discusses importance of breastfeeding/chestfeeding as traditional first foods)

For data and information about the underlying causes of racial and ethnic disparities in breastfeeding/chestfeeding:

- Breastfeeding Report Card, 2022, Centers for Disease Control and Prevention, <https://www.cdc.gov/breastfeeding/data/reportcard.htm> (last reviewed August 31, 2022) (CDC report on the breastfeeding/chestfeeding rates in U.S among babies born in 2019 with data collected across 2020-2021)
- Racial Disparities Persist for Breastfeeding Moms. Here's Why, PBS, Aug 29, 2019 <https://www.pbs.org/newshour/health/racial-disparities-persist-for-breastfeeding-moms-heres-why> (explains the role racism as a cause for the racial disparity among breastfeeding/chestfeeding moms and why it matters)

- Beyond Statistics: Uncovering the Roots of Racial Disparities in Breastfeeding, Bethel R. Mieso et al., 147 Pediatrics: e2020037887, <https://publications.aap.org/pediatrics/article/147/5/e2020037887/180853/Beyond-Statistics-Uncovering-the-Roots-of-Racial> (May 1, 2021) (discusses the roots of racial disparities in breastfeeding/chestfeeding)
- From Breastfeeding To Beyoncé, ‘Skimmed’ Tells A New Story About Black Motherhood, Beandrea July, NPR, Feb. 11, 2020, <https://www.npr.org/sections/health-shots/2020/02/11/801343800/from-breastfeeding-to-beyonc-skimmed-tells-a-new-story-about-black-motherhood>, (explores challenges and complexities around of Black motherhood, breastfeeding/chestfeeding, and culture)
- Chocolate Milk: The Documentary, 2018, <http://www.chocolatemilkdoc.com/film>, (exploring the racial divide in breastfeeding/chestfeeding rates for Black women)
- Breastfeeding Is Food Sovereignty, Camie Jae Goldhammer, Food Sovereignty Conference, SD, (discussing importance of breastfeeding/chestfeeding and role of colonization in disrupting this practice for Native women), <https://www.youtube.com/watch?v=IZN7zANzybo&t=521s>

For more information about some of the business benefits of providing supportive environments for breastfeeding/chestfeeding workers:

- The Business Case for Breastfeeding, U.S. Department of Health & Human Services Office on Women’s Health, <https://www.womenshealth.gov/breastfeeding/breastfeeding-home-work-and-public/breastfeeding-and-going-back-work/business-case> (last updated Feb. 18, 2021) (webpage with collection of resources, toolkits, and more designed to educate employers on how to support breastfeeding/chestfeeding in the workplace)
- Supporting Breastfeeding in the Workplace, U.S Department of Health & Human Services Office on Women’s Health, https://youtube.com/playlist?list=PLAg8JAY4AFSyH9gbBDTi0L3LyqJ4iRoFB&si=KvS26P7_p_xZWtCp (2014) (a series of 28 videos that showcase different workplaces and their lactation policies and offers insight and best practices on how to create supportive and inclusive environments to support breastfeeding/chestfeeding employees)

For more information about workplace lactation laws:

- FSLA Protections to Pump at Work, U.S. Department of Labor’s Wage & Hour Division, <https://www.dol.gov/agencies/whd/pump-at-work> (compendium of tools, webinars and other information to support employers and workers in understanding federal requirements and how to implement them, including in a variety of work settings)

- Supporting Nursing Moms at Work, U.S. Department of Health & Human Services Office on Women's Health (OWH), <https://www.womenshealth.gov/supporting-nursing-moms-work> (last updated Feb. 22, 2021) (compendium of resources to support implementation of workplace lactation laws)
- Pregnant at Work: An Initiative of the Center for WorkLife Law, Workplace Lactation Laws, <https://pregnantatwork.org/workplace-lactation-laws/> (June 2023) (database of state and federal workplace lactation laws)
- Pregnant Workers Fairness Act: What You Should Know, A Better Balance, <https://www.abetterbalance.org/resources/pregnant-workers-fairness-act-explainer/> (updated Nov. 14, 2023) (explains and provides information about the Pregnant Workers Fairness Act)

Endnotes

- 1 Ctrs. for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity, Breastfeeding Benefits Both Baby and Mom, <https://www.cdc.gov/nccdphp/dnpao/features/breastfeeding-benefits/index.html> (last reviewed September 7, 2023).
- 2 To learn more about this topic, please see Azura Goodman, It's Time to Add "Chestfeeding" to Your Vocabulary, Today's Parent, June 9, 2021, <https://www.todayparent.com/baby/breastfeeding/chestfeeding-faq> and Mara Santilli, Here's How Lactation Experts Are Working to Redefine and Decolonize Breastfeeding, Well + Good, Dec. 7, 2020, <https://www.wellandgood.com/decolonizing-breastfeeding>.
- 3 Christine Michel Carter, Breastfeeding at Work Benefits Mom, Baby, and Employer, Forbes, July 31, 2019, <https://www.forbes.com/sites/christinecarter/2019/07/31/breastfeeding-at-work-benefits-mom-baby-and-the-employer/?sh=29678954675f>; Carissa M. Rocheleau et al., Promoting Worker Well-Being through Maternal and Child Health: Breastfeeding Accommodations in the Workplace, Feb. 11, 2019, <https://blogs.cdc.gov/niosh-science-blog/2019/02/11/breastfeeding-work/>.
- 4 PUMP for Nursing Mothers Act, P.L. 117-328 Division KK (signed into law on Dec. 29, 2022), <https://www.dol.gov/sites/dolgov/files/WHD/flsa/PUMP-consolidated-appropriations-act.pdf>.
- 5 29 U.S.C. § 218d (2023), and U.S. Dep't of Labor, Wage and Hour Division, Frequently Asked Questions — Pumping Breast Milk at Work, <https://www.dol.gov/agencies/whd/nursing-mothers/faq> (last question and answer).
- 6 MINN. STAT. § 181.939, and specifically subds. 1(a) and 3 (2023).
- 7 6 HO CHUNK NATION CODE § 5, subsection 32.e.24(a) (last amended June 14, 2022), <https://ho-chunknation.com/wp-content/uploads/2022/07/06.14.22-ERA.pdf>.
- 8 Centers for Disease Control and Prevention, Breastfeeding Report Card, United States, 2022, <https://www.cdc.gov/breastfeeding/data/reportcard.htm> (last reviewed Aug. 31, 2022).
- 9 Eric A. Lauer et al., Identifying Barriers and Supports to Breastfeeding in the Workplace Experienced by Mothers in the New Hampshire Special Supplemental Nutrition Program for Women, Infants, and Children Utilizing the Total Worker Health Framework, 13 INTERNAT'L J. ENV. RESEARCH PUB. HEALTH 529 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6406909/pdf/ijerph-16-00529.pdf> (p.15 of PDF).

- 10 U.S. Dep't of Labor, Wage and Hour Division, Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work, <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers> (revised January 2023) (section on "Break Time to Pump Breast Milk").
- 11 U.S. Dep't of Labor, Wage and Hour Division, Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work, <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers> (revised January 2023) (section on "Break Time to Pump Breast Milk").
- 12 GA. CODE ANN. § 34-1-6(b)(2) (2023); 820 Ill. Comp. Stat. 260/5-10 (2023); and Minn. Stat. § 181.939 subd. 1(a) (2023).
- 13 See, e.g., IND. CODE § 5-10-6-2 (2023) (providing for paid pumping breaks for state and local employees).
- 14 U.S. Dep't of Labor, Wage and Hour Division, Frequently Asked Questions — Pumping Breast Milk at Work, <https://www.dol.gov/agencies/whd/nursing-mothers/faq> ("Does the break time have to be paid break time?").
- 15 U.S. Dep't of Labor, Wage and Hour Division, Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work, <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers> (revised January 2023) (sections on "Break Time to Pump Breast Milk" and "Private Space to Pump Breast Milk").
- 16 Pregnant Workers Fairness Act, H.R. 2617-1626, 117th Cong. § 103(1) (signed into law December 29, 2022), codified at 42 U.S.C. § 2000gg (2023). The Equal Employment Opportunity Commission issued a proposed rule to implement the PWFA on Aug. 11, 2023; the comment period closed on Oct. 10, 2023 and the final rule was still pending at the time this resource was written. The final rule is expected to provide additional clarity about the PWFA's requirements.
- 17 For example, lactation accommodations laws in Georgia and Minnesota have no baby age limit. See GA. CODE ANN. § 34-1-6 (2023) and MINN. STAT. § 181.939 (2023).
- 18 Jie Zhuang et al., Keep Doing the Good Work: Impact of Coworker and Community Support on Continuation of Breastfeeding, 34 HEALTH COMMUNICATIONS 1270 (2018). <https://doi.org/10.1080/10410236.2018.1476802>.
- 19 LIZ MORRIS, JESSICA LEE, JOAN C. WILLIAMS (CENTER FOR WORKLIFE LAW), EXPOSED: DISCRIMINATION AGAINST BREASTFEEDING WORKERS 17 (2019), <https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1000&context=wll>.
- 20 Michele K. Griswold et al. Experiences of Racism and Breastfeeding Initiation and Duration Among First-Time Mothers of the Black Women's Health Study, 5 J. RACIAL AND ETHNIC HEALTH DISPARITIES 1180 (2018) <https://pubmed.ncbi.nlm.nih.gov/29435898/>; Margaret D. Whitley et al., Low Job Control and Racial Disparities in Breastfeeding, 64 J. OCCUPATIONAL AND ENVIRONMENTAL MED. e482 (2022) <https://pubmed.ncbi.nlm.nih.gov/35688422/>.



Appendix: Sample Worksite Lactation Accommodations Policy

This sample policy provides employers with an example of a comprehensive and up-to-date worksite lactation accommodations policy. It was developed using examples provided by the Center for WorkLife Law and the Public Health Law Center. It includes provisions that are based on federal law requirements, recommended good practices drawn from the laws of other jurisdictions, and evidence-based practices. In this area, federal law establishes minimum standards; Tribes, states and local governments may also have lactation accommodations laws that go beyond federal protections. Employers should consult with an attorney who can give them legal advice to ensure their lactation accommodations policies and practices comply with all applicable legal requirements.

How to use this resource

This sample policy provides languages addressing necessary and recommended components for a comprehensive policy, including explaining why these policies are important, what actions are required, how they should be implemented and enforced, and what are the specific responsibilities of employers and employees. Drafting tips and alternatives or options for policy language are indicated with **red type**. Drafting tips also provide additional information and guidance on recommended language. Text to be inserted [**fill-in-the-blank text**] is indicated with brackets and is also in gray type. Employers should tailor and customize their policy language to make sure it aligns with their organizational culture and practices, and so that it complies with the laws of the jurisdiction(s) within which they operate.

Introduction

Drafting Tip

It is a good practice to provide data and information related to the need and rationale for a policy, to help everyone understand why the policy is useful and/or necessary. Below is sample language that could be included as an introduction or preface to the policy.

Breastfeeding/chestfeeding lowers the risk of several diseases for babies, including asthma, obesity, Type 1 diabetes, severe lower respiratory disease, ear infections, childhood overweight and obesity, sudden infant death syndrome (SIDS), gastrointestinal infections, and necrotizing enterocolitis (a serious gastrointestinal problem that typically affects premature babies).¹ Human milk also protects infants from diarrhea, colds, and flu.²

For lactating parents, breastfeeding/chestfeeding lowers their risk of high blood pressure, Type 2 diabetes, ovarian cancer, and breast cancer. Studies indicate that breastfeeding/chestfeeding also reduces stress and is positively linked to lower rates of postpartum depression in women.³

Breastfeeding/chestfeeding also brings benefits to employers. Research shows that employers who support lactating employees experience positive returns on investment and ultimately save money. Because both babies and employees experience better health outcomes, lactating employees have lower rates of absenteeism from their jobs compared to employees who formula-feed their infants. Healthier employees also mean fewer medical insurance claims for employers.⁴

Businesses with good lactation support policies and programs also experience better rates of employee retention and lower turnover rates compared to those without any programs. Employees are more likely to return to their workplace following childbirth if their employer supports breastfeeding/chestfeeding. Businesses who support lactating employees also report improved job satisfaction and increased productivity.⁵

Federal [[and Tribal, state, and/or local law, as applicable](#)] law require employers of all sizes to provide reasonable milk expression breaks every day to breastfeeding/chestfeeding employees as needed, and an appropriate, private space that is not a bathroom or toilet stall, for these breaks.

Core Policy Provisions

Drafting Tip

The following is sample language for the core provisions for a worksite lactation accommodations policy. This language is based both on federal law requirements and includes recommended good practices.

Policy

It is [name of employer]'s priority and responsibility to provide reasonable breaktimes and make reasonable efforts to provide an appropriate space (which cannot be a bathroom) for breastfeeding/chestfeeding employees to express milk during their work day. This includes the following lactation accommodations policy administered by [name of relevant department or title of relevant role — for example, the employee's supervisor]. Starting [date], this policy will be provided to all current employees and to all new employees at the start of their employment.

Drafting Tip

If the employer has a human resources handbook or similar kind of resource, include language like this: This policy will also be incorporated into the employee handbook.

In accordance with [Tribal, state, local] and federal law, [name of employer] provides reasonable accommodations for employees' pregnancy, childbirth, or related medical conditions, including accommodations for lactation. Before an employee returns from parental leave, [name of employer] will seek to discuss with the employee what reasonable accommodations the employee may need to express breast milk at work.

[Name of employer] will not tolerate discrimination or harassment against any employee based on the request for or usage of lactation accommodations. Any discrimination, harassment, or other violations of this policy can be reported to [name of relevant role, office within the employer's organization].⁶

Drafting Tip

A recommended practice is to provide annual training on this policy and other important HR policies, for staff and supervisors. Employers who wish to provide this kind of training could use this language: All staff, including managers and supervisors, will receive training about this policy and how to implement it upon hiring, and at least annually thereafter.

Reasonable Time to Express Human Milk

[Name of employer] will provide reasonable amounts of time each day for an employee to express human milk and will not unreasonably limit the amount of time or the frequency that an employee expresses milk, as determined by the employee's needs. [Name of employer or employee's supervisor] will speak with the employee to determine a schedule of breaks that accommodates the employee's pumping needs.

[Name of employer] recognizes that an employee's lactation accommodation needs may change over time. Employees may request changes to their existing lactation accommodations at any point.

[Name of employer] shall not reduce an employee's compensation for break times used for the purpose of expressing milk. Milk expression breaks may run concurrently with break times already provided, but this is not required and should be done only if doing so meets the employee's needs.

Break times include time needed to get to and return from the lactation space, to pump, and to clean and store equipment and human milk.⁷

[Name of employer] does not require the employee to work while pumping. However, if the employee works while pumping, this will not be considered break time and is regular work time.

Lactation Space

Drafting Tip

This section provides three sets of alternative language to choose from, depending on what type of lactation space the employer can provide, including a flexible, temporary space (such as a storage room, tent or portable space, an empty office, etc.); a multi-purpose room (such as a conference room, meditation room, or similar space); or a dedicated lactation space.

If the employer doesn't have a dedicated space:

[Alternative] Flexible, Temporary Lactation Spaces

[Name of employer] will discuss options to ensure employees will be able to express human milk (or pump) at work. Such options may include creating a temporary lactation space, allowing pumping in a shared space or at the employee's work area, or allowing longer breaks for employees to pump offsite.

[Name of employer] will provide a space that is shielded from view, free from intrusion, provides access to at least one electrical outlet, and is in close proximity to the employee's work area. The space cannot be a bathroom. [Employer's supervisor] will discuss with the employee how to accommodate the employee's needs to pump at work, including how to ensure the employee's privacy and maintain a sanitary pumping environment.

Drafting Tip

Worksite lactation spaces must include the following features to ensure good compliance: [Name of employer] provides the following additional items in the lactation space: a surface to place a pump and other items, and a chair. The lactation space is also located near a sink with running water and a refrigerator where milk can be stored.

Drafting Tip

If the employer does not have a refrigerator and cannot provide one, consider including this language: [name of employer] does not provide a refrigerator on site, and will discuss alternative options for where the employee may store their human milk, which may include, for example, allowing the employee to bring in a cooler.

If the employer is using a multi-purpose space (such as a conference room, wellness room, or storage room):

[Alternative] Multi-Purpose Space Available for Use for Lactation

[Name of employer] has designated [insert room here] as a lactation room when employees are using the room to express human milk. [Name of employer] will notify other employees that the room will be prioritized as a lactation room and may only be used for expressing human milk during the time[s] when lactating employees need the space. [Name of employer] will post proper signage to notify others when the room is in use and will ensure that it can be shielded from view of others while being used as a lactation room.

The employees who need the room for pumping will be given priority use of the room and their pumping needs will determine the availability of the room for other purposes.⁸

[Name of employer] will ensure that [the multi-purpose room] can be locked from the inside or otherwise made secure so that the employee pumping can do so without intrusion.

[Name of employer] will provide a space that is shielded from view, free from intrusion, provides access to at least one electrical outlet, and is in close proximity to the employee's work area. The space cannot be a bathroom. [Employer's supervisor] will discuss with the employee how to accommodate the employee's needs to pump at work, including how to ensure the employee's privacy and maintain a sanitary pumping environment.

Drafting Tip

Worksite lactation spaces must include the following features to ensure good compliance: [Name of employer] provides the following additional items in the lactation space: a surface to place a pump and other items, and a chair. The lactation space is also located near a sink with running water and a refrigerator where milk can be stored.

Drafting Tip

If the employer does not have a refrigerator and cannot provide one, consider including this language: [Name of employer] does not provide a refrigerator on site, and will discuss alternative options for where the employee may store their human milk, which may include, for example, allowing the employee to bring in a cooler.

When more than one employee needs to use [the multi-purpose room] to express milk, [name of employer] will discuss alternative options with all employees who use the shared space to determine what arrangement addresses their needs. Options may include: finding alternative spaces; making the space shareable for multiple users with screens, curtains, or other privacy measures; or creating a schedule for use.

If [the multi-purpose room] is unavailable for use as a lactation room when an employee needs it, [name of employer] will provide [identify alternative space] for temporary use as a lactation room.

Even if [the multi-purpose room] is available, an employee who wishes to pump at their usual workspace will be permitted to do so if it is a reasonable accommodation.⁹

If the employer has a dedicated lactation room:

[Alternative] Lactation Room

[Name of employer]'s dedicated lactation room[s] (which [is/are] not a bathroom) [is/are] located at [insert location].

[Name of employer] will ensure that the employee work areas are in close proximity to the lactation room[s], and will ensure that the lactation room[s]: contain[s] at least one electrical outlet; [is/are] shielded from view of others; and [is/are] free from intrusion or can be locked or otherwise secured from the inside to avoid intrusion. [Employer's supervisor] will discuss with the employee how to accommodate the employee's needs to pump at work, including how to ensure the employee's privacy and maintain a sanitary pumping environment.

Drafting Tip

Worksite lactation spaces must include the following features to ensure good compliance: [Name of employer] provides the following additional items in the lactation space: a surface to place a pump and other items, and a chair. The lactation space is also located near a sink with running water and a refrigerator where milk can be stored.

Drafting Tip

If the employer does not have a refrigerator and cannot provide one, consider including this language: [**Name of employer**] does not provide a refrigerator on site, and will discuss alternative options for where the employee may store their human milk, which may include, for example, allowing the employee to bring in a cooler.

When more than one employee needs to use the designated lactation room, [**name of employer**] will discuss various options with all employees who use the lactation room to determine what arrangement addresses each employee's needs so that each employee has access to a compliant lactation space. Options may include: finding an alternative clean space free from intrusion and shielded from view with access to an outlet (that is not a bathroom); making the space shareable for multiple users with screens, curtains, or other privacy measures; or creating a schedule for use. Any accommodation must ensure each employee is afforded the time they need to pump.

Even if the lactation room is available, an employee who wishes to pump at their usual workspace will be permitted to do so if it is a reasonable accommodation.¹⁰

Lactation Accommodation Request Process

Drafting Tip

This section makes clear how the policy is operationalized and who is responsible for doing what. This section follows recommended good practices for providing notice of and communicating about the availability of lactation accommodations in an efficient and proactive way. Tribal, state, or local laws may include additional or different notice or educational requirements.

Before an employee returns from parental leave, [**name of employer**] will send this policy to the employee in writing (electronically or by mail) and ask the employee about their needs for reasonable accommodations to express milk at work.

Employees may also independently request lactation accommodations by contacting [**name of relevant department/supervisor/other name of individual**]. A request may be made orally or in writing, and should indicate that the employee will need accommodations for expressing

human milk at work. (If the employer has a request form, the employee may complete it and submit it to the employer in a manner designated by the employer.)

[**Name of relevant department/supervisor/name of individual**] will respond to a request for a lactation accommodation **as quickly as possible**. Under no circumstances will this amount of time exceed five (5) business days.

Drafting Tip

An employer's responsibility to provide lactation accommodation requests begins when an employee submits the request. Thus, it's in the employer's best interest to respond to these requests as quickly as possible.

During the time it takes to respond to a request and/or engage in an interactive process to determine the accommodations, [**name of employer**] will provide temporary reasonable accommodations to the employee so that the employee can pump in a manner that meets the employee's immediate needs.¹¹

[**Name of employer**] recognizes that employees' lactation accommodations needs may change over time. Employees may request changes to their existing lactation accommodations at any point.

Establishing that Accommodations Will Cause Undue Hardship for the Employer's Operations¹²

Note: "Undue Hardship" Exemptions Are Rare and May Not Apply

Federal law states that employers with fewer than 50 employees across all their sites may be excused from providing lactation accommodations if they can show that doing so would cause "undue hardship,"¹³ However, Tribal, state, or local laws can be more protective than federal law and may not include this kind of exception.¹⁴ For employers in jurisdictions without this kind of exception, this language is not relevant and should be avoided. For employers in jurisdictions that allow this kind of exception, they should be aware that situations that would rise to the level of undue hardship or undue disruption (another phrase that may be used) seem rare and difficult to prove. The authors could find no documented cases of an employer successfully proving undue hardship or disruption for providing a lactation accommodation. Employers with questions about the applicability of this exception to their situations should consult an attorney who can provide legal advice.

If [name of employer] believes that a lactation accommodation requested will cause undue hardship for the operations of [name of employer], [name of employer] will discuss reasonable alternatives with the employee to accommodate the employee's needs, initiating an interactive process immediately.

Drafting Tip

An employer's responsibility to provide lactation accommodation requests begins when an employee submits the request. Thus, it's in the employer's best interest to respond to these requests as quickly as possible.

The conversation between [name of employer] and the employee will be in good faith, may occur orally or in writing, and will conclude with a final written determination of the accommodations granted or denied. This process gives the employee an opportunity to have an open discussion with [name of employer] about their needs, and [name of employer] has an opportunity to hear its employee and work with them to come up with appropriate accommodations for the employee.

For example, if [name of employer] believes the length of time an employee needs to pump will cause undue hardship for the operations of [name of employer], [name of employer] will engage in an interactive process with the employee to determine if there is an accommodation, such as an adjusted pumping schedule, or more frequent pumping breaks for shorter periods of time, that addresses [name of employer]'s concerns and the employee's needs.

During the time it takes to respond to a request and/or engage in an interactive process to determine the accommodation, [name of employer] will provide temporary accommodations to the employee so that the employee can pump in a manner that meets the employee's immediate needs unless doing so will cause undue hardship for [name of employer].¹⁵

Additional Information

- For questions about this policy, employees should talk to [name/title of appropriate person or department].
- Additional information about [Tribe's/state's/city/county's] lactation accommodation laws can be found at [insert URL].

- Additional information about federal lactation accommodation laws can be found at [dol.gov/agencies/whd/pump-at-work](https://www.dol.gov/agencies/whd/pump-at-work).
- Contact information for the local Wage & Hour Division can be found at [dol.gov/agencies/whd/contact/local-offices](https://www.dol.gov/agencies/whd/contact/local-offices).
- Information about the federal 2022 Pregnant Women’s Fairness Act can be found at [eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act](https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act).
- The Equal Employment Opportunity Commission provides an [infographic](#) with tips for workers about how to ask for a reasonable accommodation.

The Public Health Law Center provides information and legal technical assistance on issues relating to public health and health equity. The Center does not provide legal representation or advice. As explained above, this sample policy should not be considered legal advice. Readers who have questions about their rights or responsibilities relating to worksite lactation accommodations should consult with an attorney who is familiar with the laws of their jurisdiction and who can give them legal advice.

This resource was co-created by a 2023 Innovation, Equity, and Exploration (IEE) workgroup with funding support from Voices for Healthy Kids, an American Heart Association initiative. It does not necessarily reflect the views of the AHA. More information about the workgroup’s activities and recommendations are at publichealthlawcenter.org.

Appendix endnotes

- 1 Cesar G. Victoria et al., *Breastfeeding in the 21st Century: Epidemiology, Mechanisms, and Lifelong Effect*, 387 THE LANCET 475, 475-490 (2016), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(15\)01024-7/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(15)01024-7/fulltext); Johns Hopkins Medicine, *Breast Milk Is Best*, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/breastfeeding-your-baby/breast-milk-is-the-best-milk#:~:text=Breastfeeding%20helps%20protects%20babies%20from,babies%20who%20are%20not%20breastfed> (last visited May 8, 2023); Ctrs. for Disease Control and Prevention, *Breastfeeding: Why It Matters*, <https://www.cdc.gov/breastfeeding/about-breastfeeding/why-it-matters.html> (last updated August 23, 2021); Am. Acad. of Pediatrics, *Benefits of Breastfeeding*, <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Breastfeeding/Pages/Benefits-of-Breastfeeding.aspx> (updated Mar. 9, 2021).
- 2 Ctrs. for Disease Control and Prevention, *Breastfeeding: Why It Matters*, <https://www.cdc.gov/breastfeeding/about-breastfeeding/why-it-matters.html> (last updated August 23, 2021).
- 3 See Am. Acad. Of Pediatrics, *Benefits of Breastfeeding*, <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Breastfeeding/Pages/Benefits-of-Breastfeeding.aspx> (updated Mar. 9, 2021); Ctrs. for Disease Control and Prevention, *Breastfeeding: Why It Matters* <https://www.cdc.gov/breastfeeding/about-breastfeeding/why-it-matters.html> (last updated August 23, 2021); Kathleen M. Krol and Tobias Grossman, *Psychological Effects of Breastfeeding Children and Mothers*, 61 BUNDESGESUNDHEITSBLATT-GESUNDHEITSFORSCHUNG-GESUNDHEITSSCHUTZ 983 (2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6096620/pdf/103_2018_Article_2769.pdf; and Carley J. Pope and Dwight Mazmanian, *Breastfeeding and Postpartum Depression: An Overview and Methodological Recommendations for Future Research*, 2016 DEPRESSION RESEARCH AND TREATMENT (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4842365/pdf/DRT2016-4765310.pdf>.

- 4 Office on Women's Health, U.S. Dep't of Health and Human Servs., Business Case for Breastfeeding, <https://www.womenshealth.gov/breastfeeding/breastfeeding-home-work-and-public/breastfeeding-and-going-back-work/business-case> (last updated Feb. 18, 2021). See also Minn. Dep't of Health, Breastfeeding Information for Workplaces, <https://www.health.state.mn.us/people/breastfeeding/workplaces.html> (last updated Nov. 28, 2022).
- 5 Office on Women's Health, U.S. Dep't of Health and Human Servs., Business Case for Breastfeeding, <https://www.womenshealth.gov/breastfeeding/breastfeeding-home-work-and-public/breastfeeding-and-going-back-work/business-case> (last updated Feb. 18, 2021). See also Minn. Dep't of Health, Breastfeeding Information for Workplaces, <https://www.health.state.mn.us/people/breastfeeding/workplaces.html> (last updated Nov. 28, 2022).
- 6 Employees may also file a complaint with the U.S. Department of Labor's Wage and Hour Division through this link: <https://www.dol.gov/agencies/whd/contact/complaints>, and/or with the [[Tribe/state department of labor](#)] at [[telephone number and email address](#)].
- 7 See U.S. Dep't of Labor, Wage & Hour Div., Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work (revised Jan. 2023), <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers> (section on "Break Time to Pump Breast Milk").
- 8 If the multi-purpose space also is used to provide accommodations related to disability or religion — for example, it is also used as a prayer room — [[name of employer](#)] will make every effort to accommodate the needs of all employees.
- 9 It is the employer's responsibility to prove that providing an accommodation would be an undue hardship or undue disruption. Discomfort expressed by a coworker, client, or customer generally does not rise to the level of unduly disrupting operations for the employer. Inconvenience generally is not undue hardship. The U.S. Department of Labor provides helpful guidance in understanding what would be considered an undue hardship for an employer's operations: "undue hardship" is determined by looking at the difficulty or expense to the specific employer, the employer's financial resources, and the nature and structure of the employer's business, among other factors. See, U.S. Dep't of Labor, Job Accommodations, <https://www.dol.gov/general/topic/disability/jobaccommodations> (last visited May 7, 2023).
- 10 See note 9.
- 11 See note 9.
- 12 See note 9.
- 13 29 U.S.C. § 218d(c) (2023). See also U.S. Dep't of Labor, Wage and Hour Division, Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work, <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers> (revised January 2023) (section on "Covered Employees").
- 14 The Center for WorkLife Law provides a survey of state workplace accommodations laws, last updated June 2023, available here: <https://www.dol.gov/agencies/whd/contact/local-offices>.
- 15 See note 9.

We collaborate with others to reduce and eliminate commercial tobacco, promote healthy food, support physical activity, pursue climate justice, and address other causes of chronic disease. We partner with Tribal health leaders, federal agencies, national health advocacy organizations, state and local governments, planners, researchers, attorneys, community coalitions, and individuals working on public health issues to create healthier communities around the country.

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